

LAW OFFICES OF  
**ANDREW L. PACKARD**

245 KENTUCKY STREET, SUITE B3, PETALUMA, CA 94952

PHONE (707) 782-4060 FAX (707) 782-4062

INFO@PACKARDLAWOFFICES.COM

FEB 15 2018

February 9, 2018

**VIA CERTIFIED MAIL**

David L. Schneider, Managing Member and  
Agent for Service of Process  
Schneider Dock Industrial Park, LLC  
990 West Waterfront Drive  
Eureka, CA 95501

**Re: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE  
FEDERAL WATER POLLUTION CONTROL ACT ("CLEAN WATER ACT")  
(33 U.S.C. §§ 1251 *et seq.*)**

Dear Mr. Schneider:

This firm represents Californians for Alternatives to Toxics ("CATs") in regard to violations of the Clean Water Act ("the Act") occurring at Schneider Dock Industrial Park, LLC's ("SDIP") Industrial Park and Dock located at 990 West Waterfront Drive, in Eureka, California (the "Facility"). This letter is being sent to you as the responsible owner, officer and/or operator of the Facility. Unless otherwise noted, David L. Schneider and Schneider Dock Industrial Park, LLC shall hereinafter be collectively referred to as "SDIP." CATs is a non-profit association dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including the waters into which SDIP discharges polluted storm water.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects SDIP to a penalty of up to \$51,570 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CATs will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The Clean Water Act requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. *See* 40 C.F.R. § 135.2. As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of

sixty (60) days from the date of this letter, CATs intends to file suit under Section 505(a) of the Act in federal court against SDIP for violations of the Clean Water Act and the Permit.

**I. Schneider Dock Industrial Park, LLC Is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States Without a Permit.**

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984) (citing 33 U.S.C. § 1311(a)). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.30(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made water bodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

SDIP currently discharges, and will continue to discharge, Total Suspended Solids, Chemical Oxygen Demand, Iron, Aluminum, Lead, Copper, Zinc, and pH (“the Pollutants”) from the Facility directly from the Schneider Dock, and from storm water conveyances, which SDIP owns and/or operates, that drain storm water associated with industrial activities from SDIP’s industrial tenants to Humboldt Bay without a valid NPDES permit. Humboldt Bay is a water of the United States. Accordingly, SDIP’s discharges of water containing Pollutants from the Facility are discharges to waters of the United States.

CATs is informed and believes, and thereupon alleges, that SDIP has the duty to apply for an NPDES permit, because it discharges pollutants from the Facility to navigable waters. SDIP has failed to meet this duty, and has not applied for a current NPDES permit, violating Section 301(a) of the Act. SDIP has discharged, and continues to discharge, pollutants from the Facility to waters of the United States every day that that there has been or will be any measurable discharge<sup>1</sup> of storm water from the Facility without a permit since

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<sup>1</sup> A “measurable discharge” is presumed to occur during a storm event of 0.1 inches of precipitation or more.

January 25, 2017. Attachment A hereto, sets forth the specific rain dates on which CATs alleges that SDIP has discharged storm water in violation of the Act. These discharges are the activities alleged to have caused and continuing to cause these violations. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

These unlawful discharges are ongoing. SDIP is subject to penalties for violations of the Act since January 25, 2017.

## **II. Persons Responsible for the Violations.**

CATs puts SDIP on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CATs puts SDIP on formal notice that it intends to include those persons in this action.

## **III. Name and Address of Noticing Parties.**

The name, address and telephone number of each of the noticing parties is as follows:

Patricia Clary, Executive Director  
Californians for Alternatives to Toxics  
P.O. Box 900  
Eureka, CA 95502  
(707) 834-4833

## **IV. Counsel.**

CATs has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard  
William N. Carlon  
Law Offices of Andrew L. Packard  
245 Kentucky Street, Suite B3  
Petaluma, CA 94952  
(707) 782-4060  
andrew@packardlawoffices.com

## **V. Conclusion**

CATs believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against SDIP and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest

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that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew L. Packard", written in a cursive style.

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Andrew L. Packard  
Law Offices of Andrew L. Packard  
Counsel for Californians for Alternatives to Toxics

**SERVICE LIST**

**VIA CERTIFIED MAIL**

Scott Pruitt, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Alexis Strauss, Acting Regional Administrator  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Jeff Sessions, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Eileen Sobeck, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Matthias St. John, Executive Officer  
North Coast Regional Water Quality Control Board  
5550 Skylane Boulevard Suite A  
Santa Rosa, CA 95403

**ATTACHMENT A**  
**Notice of Intent to File Suit, SDIP**  
**Significant Rain Events, January 25, 2017 – February 9, 2018**

January 30, 2018	April 24, 2017	February 16, 2017
January 25, 2018	April 23, 2017	February 15, 2017
January 24, 2018	April 19, 2017	February 10, 2017
January 21, 2018	April 18, 2017	February 9, 2017
January 20, 2018	April 17, 2017	February 8, 2017
January 18, 2018	April 16, 2017	February 7, 2017
January 17, 2018	April 14, 2017	February 6, 2017
January 15, 2018	April 13, 2017	February 5, 2017
January 11, 2018	April 12, 2017	February 4, 2017
January 9, 2018	April 11, 2017	February 3, 2017
January 8, 2018	April 9, 2017	February 2, 2017
January 5, 2018	April 8, 2017	
January 3, 2018	April 7, 2017	
December 30, 2017	April 6, 2017	
December 20, 2017	March 29, 2017	
December 19, 2017	March 27, 2017	
December 2, 2017	March 26, 2017	
November 28, 2017	March 25, 2017	
November 26, 2017	March 24, 2017	
November 23, 2017	March 23, 2017	
November 22, 2017	March 21, 2017	
November 20, 2017	March 20, 2017	
November 15, 2017	March 19, 2017	
November 13, 2017	March 18, 2017	
November 10, 2017	March 15, 2017	
November 9, 2017	March 9, 2017	
November 8, 2017	March 8, 2017	
November 3, 2017	March 7, 2017	
November 2, 2017	March 6, 2017	
October 20, 2017	March 5, 2017	
October 19, 2017	March 4, 2017	
September 20, 2017	February 27, 2017	
September 17, 2017	February 26, 2017	
September 7, 2017	February 25, 2017	
June 10, 2017	February 23, 2017	
June 7, 2017	February 22, 2017	
May 16, 2017	February 21, 2017	
May 12, 2017	February 20, 2017	
May 11, 2017	February 19, 2017	
May 5, 2017	February 18, 2017	
April 26, 2017	February 17, 2017	